HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASCADE MANUFACTURING SALES, INC., a Washington corporation, Plaintiff, vs. PROVIDNET CO TRUST, a Washington trust dba WORMSWRANGLER.COM; BARRY RUSSELL, an individual, Defendants.	CASE NO: C08-5433RBL CASCADE MANUFACTURING SALES, INC.'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMARY JUDGMENT Noted for Hearing: **August 7, 2009**

I. INTRODUCTION

Provident Co Trust, d/b/a WormsWrangler.com ("***Provident***") and Barry Russell ("***Russell***") (together "***Defendants***") have not responded to the summary judgment motion (seeking a determination as to infringement) by ("***Cascade***"), the owner of the federally registered WORM FACTORY trademark (the "***Mark***"). Rather than revisit the arguments made in that motion, Cascade would like to point out that Defendants were provided ample time, information and even support by Plaintiff to respond. Defendants were specifically advised of their obligation to respond. Accordingly, Defendants' failure to respond should be construed as

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a concession that they had no substantive arguments.

On July 19, 2009, Plaintiff provided Defendants with all of the documents related to the motion via email as well as the noting date of the motion. (See ¶1, **Ex. A** to the Declaration of Danny Bronski, submitted herewith.) On July 24, 2009, Plaintiff provided Defendants with all of the exhibits related to Barry Russell's deposition as well as a link to the rules that Defendants could use to determine how and when to respond to the summary judgment motion – Defendants were specifically apprised of their obligation to respond. (Bronski Decl., ¶2.) In between, Mr. Russell sent counsel for Cascade four emails constructively acknowledging, if not actively addressing, his obligations related to this motion. (See Bronski Decl., ¶3.) Counsel for Cascade also sent multiple emails during the first week of August reminding Russell of his impending deadline to respond and even granting him two additional days to respond. (See Bronski Decl., ¶4, **Ex. B**.) Still, on August 7, 2009, Plaintiff has received no response to Cascade's motion.

II. CONCLUSION

To summarize the arguments made in the summary judgment motion, there is no dispute that Defendants utilized the Mark following termination of the agreement in place between the parties. Defendants have previously argued that a separate agreement (*i.e.*, distinct from the Agreement) exists, but Defendants were never able to articulate any of the terms of this purported agreement, and in any event, understood this agreement to be freely terminable by Cascade. Defendants have put forth no evidence whatsoever of any documentation which constitutes evidence of this purported agreement. There is also no dispute that Defendants utilized a confusingly similar variation of the Mark with respect to identical goods. The United States Patent and Trademark Office determined that FACTORY OF WORMS is confusingly similar to WORM FACTORY. This is also in accord with the result dictated by application of the Sleekcraft factors. Defendants did not address or attempt to contradict any of these arguments via a response to the summary judgment motion. In any event, the evidence submitted with Cascade's motion makes clear that there are no issues of material fact as to these

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issues. Accordingly, summary judgment as to liability and a finding of infringement is proper.

Respectfully submitted, and dated this 7th day of August, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on this August 7, 2009, I filed the foregoing copy of Cascade's Reply in Support of Summary Judgment via the Court's CM/ECF system, and sent a copy of the foregoing to Defendants via email.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Danny Bronski
Danny Bronski

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